

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King	Team: Team # 4	CCRB Case #: 200301254	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 3:00 PM	Location of Incident: 54th Street and 2nd Avenue in Manhattan	Precinct: 17	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Tue, 02/18/2003 10:13 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 02/18/2003 10:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. AC Michael Esposito	00000	856356	PBMS

Officer(s)	Allegation	Investigator Recommendation
A.AC Michael Esposito	Discourtesy: Assistant Chief Michael Esposito spoke obscenely to § 87(2)(b)	
B.AC Michael Esposito	Force: Assistant Chief Michael Esposito used physical force against § 87(2)(b)	

Synopsis

This complaint stems from the anti-war rally that took place on February 15th, 2003 at the United Nations headquarters, which received extensive press coverage. As such, the case was deemed to be sensitive and placed on the agency's sensitive case list. The complainant in this case – § 87(2)(b) – filed her complaint with the City of New York website, *nyc.gov*, on February 18th, 2003. The complaint was then forwarded to the CCRB on February 18th, 2003 for investigation. § 87(2)(b) attempted to attend the anti-war rally when she came upon a large group of demonstrators at the intersection of 54th Street and 2nd Avenue. Movement was prohibited when members of the police department started ordering the demonstrators to the sidewalks. § 87(2)(b) identified an officer by the name of "Esposito" as yelling "get the fuck on the sidewalk." Based on § 87(2)(b)'s description of the officer, the investigation identified AC Michael Esposito as the subject officer. AC Esposito indicated that he told numerous demonstrators to "get on the sidewalk," though he denied using profanity. § 87(2)(g)

§ 87(2)(b) attempted to walk to the sidewalk when she was pushed on her back, causing her to stumble forward but not fall. § 87(2)(b) turned to see "PO Esposito" standing in front of her and believed that he was the officer who pushed her. AC Esposito categorically denied pushing any civilians during the rally and indicated that all of his physical interactions with civilians were face-to-face. § 87(2)(g)

§ 87(2)(b) rejected mediation twice. § 87(2)(b)

Summary of Complaint

§ 87(2)(b) a § 87(2)(b), was interviewed via telephone on February 26th, 2003. She provided a formal statement at the CCRB on April 1st, 2003 (Enclosure 5-5e). § 87(2)(g)

On February 15th, 2003, § 87(2)(b) attempted to attend the anti-war rally in the vicinity of 49th Street and 1st Avenue. § 87(2)(b) was on her way to the rally by herself when she came upon a large congregation of demonstrators at the intersection of 54th Street and 2nd Avenue. The protesters were in the middle of the street and movement was difficult, if not prohibited, due to the number of people crowded together. § 87(2)(b) estimated the time to be between 2:30 and 3 PM. § 87(2)(b) stood on the east side of the avenue when an officer from the west side of the avenue approached her and the group of people surrounding her. The uniformed, white male officer shouted at the crowd, "get the fuck on the sidewalk." § 87(2)(b) started to walk to the sidewalk when she was pushed on her back and stumbled forward. § 87(2)(b) turned around and stood face to face with the officer who had been yelling at the demonstrators to get onto the sidewalk. § 87(2)(b) read the officer's nameplate, which read, "Esposito." § 87(2)(b) yelled, "excuse me; can you not talk like that, I mean, this is not effective." Upon further questioning, § 87(2)(b) was unclear regarding what she said and indicated that she probably said something along the lines of "excuse me, can you not push me?" During her formal interview, § 87(2)(b) claimed that "PO Esposito" then yelled, "arrest her!" According to § 87(2)(b) there were no other officers around to arrest her so she was not arrested. After this, PO Esposito returned to the west side of the avenue. § 87(2)(b) described the officer in the following way: 5'8" white male with white hair, "a really bad capping job on his front teeth," possibly in his 60s with a body type somewhere between being "svelte" and "chunky." § 87(2)(b) then spoke to two unidentified, uniformed officers regarding PO Esposito and they informed her that there was a Chief by the name of Esposito and a Captain. § 87(2)(b) did not sustain any injury.

After 15 minutes had passed, § 87(2)(b) then approached and spoke with PO Esposito for several minutes, complaining about what had happened. § 87(2)(b) interpreted PO Esposito's demeanor as being unwilling to listen to her and described this encounter as futile, as it seemed to her that PO Esposito thought he had "effectively persuaded (her) to be friends." After talking with PO Esposito for approximately 2-3 minutes, § 87(2)(b) left the scene and did not attend the rally.

§ 87(2)(b) rejected the possibility of mediation. § 87(2)(b)

Results of Investigation

After obtaining a description of the officer from § 87(2)(b) during the initial phone interview on February 26th, 2003, an expedited request was made for a photographic array containing Assistant Chief Michael Esposito, the commanding officer of Patrol Borough Manhattan North. AC Esposito closely fit the description that § 87(2)(b) provided. The photographic array was received on March 14th, 2003.

During § 87(2)(b)'s formal interview on April 1st, 2003, § 87(2)(b) was shown a photographic array. However, she could not identify any of the officers depicted as being the subject. On April 7th, the undersigned conducted a query for all White male "Espositos" assigned to the police department, locating a total of 32. Of these, 19 were 30 years of age or younger, thereby eliminating them as possible subjects. Ten were in their 40s and only two were in their 50s: AC Michael Esposito and Chief of Department Joseph Esposito. Using the City's Intranet, the undersigned viewed COD Esposito's photograph, which revealed him to have a brown mustache and dark hair. § 87(2)(g)

Assistant Chief Michael Esposito was identified as the subject officer based on the description and information that § 87(2)(b) provided as well as AC Esposito's admitted presence at the incident's location. § 87(2)(b) described AC Esposito as being a 5'8" white male with white hair, possibly in his 60s with a body type somewhere between being "svelte" and "chunky." AC Esposito's statistical information lists him as being a 5'9", 220 pound, § 87(2)(b)-old White male with grey hair. AC Esposito was subsequently scheduled for interview.

Officer Statement – AC Michael Esposito

AC Michael Esposito was interviewed at the CCRB on April 23rd, 2003 (Enclosure 6-6a). On February 15th, 2003, AC Esposito was the commanding officer of the entire detail consisting of 1,500 subordinates patrolling the anti-war rally. AC Esposito worked in uniform and oversaw the day's events from numerous locations throughout the 17th Precinct. The event lasted approximately 3-4 hours on 1st Avenue from 48th Street to 66th Street. Throughout the day, the crowd grew larger, as more civilians were coming to the demonstration to protest, thereby filling many of the avenues west of 1st Avenue. In response, the police department erected barricades along 2nd Avenue that would prevent people from walking east along the numbered streets to 1st Avenue. The plan was to direct civilians north until they reached an open side street enabling them to cross to 1st Avenue. As a result, a number of confrontations occurred between civilians and officers at the front of the barricades. AC Esposito indicated that confrontations between civilians and officers occurred at 54th Street and 2nd Avenue as well as 52nd Street and 2nd Avenue. AC Esposito recalled that at 54th and 2nd, some of the people in the crowd were chanting, "Whose streets? Our streets" and then attempted to force their way through the barricades. At this, AC Esposito then directed his officers in the area to direct the civilians out of the intersection, as they were blocking traffic. Any civilians who remained were arrested, though AC Esposito could not say how many arrests were made at that intersection. At times, AC Esposito was directing civilians to move onto the sidewalk, though he denied ever yelling at the civilians to "get the fuck on the sidewalk." He also indicated that he informed hundreds of civilians to walk north in order to get to the rally. Regarding physical interactions, AC Esposito indicated that all of his physical interactions with civilians were face-to-face. He categorically denied ever pushing a female civilian in the back as she was moving towards the sidewalk. He agreed that he told subordinate officers to arrest civilians who refused to vacate 2nd Avenue in the vicinity of 54th Street. AC Esposito also explained that if he told an officer to arrest an individual, that individual was most likely arrested, though he also pointed out that if there were a large group of people whom he was ordering to be arrested, then it was possible that some of the people might have left. Once the barricades were breached by the protesters, though, AC Esposito stepped back and allowed his subordinates to handle the activity. As such, AC Esposito was not involved in the physical confrontations that took place after the barricades at 54th and 2nd came down. He described the scene as being "chaotic." After this happened, AC Esposito requested that mounted units respond to the scene. During his CCRB interview, AC Esposito did not recognize § 87(2)(b) from a photograph and stated that he interacted with hundreds of civilians on the date in question. AC Esposito admitted that he spoke with a female civilian in the vicinity of 54th Street

and 2nd Avenue as the event was winding down, though he was not sure if this was the complainant. According to the Assistant Chief, § 87(2)(b)

§ 87(2)(b) was present during his interaction with the unidentified woman. AC Esposito and the unidentified woman had a casual, civil conversation that lasted approximately 10-15 minutes. The female was asking why the officers were acting in various manners and the Chief attempted to explain what was happening. The conversation appeared to end on friendly terms and the female never indicated that she planned to file a complaint.

Contact with § 87(2)(b)

On April 28th, 2003, the undersigned contacted § 87(2)(b) and spoke to him briefly about his recollection of February 15th and his interaction with AC Esposito that day (Enclosure 7c). § 87(2)(b) could not recall any civilians speaking to Chief Esposito other than a young female who looked like a student § 87(2)(b) is § 87(2)(b). He could not recall the specifics of this conversation, though he stated that nothing out of the ordinary occurred. For the time that § 87(2)(b) was with AC Esposito, the Chief did not appear to “commit anything that resembled misconduct.” § 87(2)(b) elaborated that he did not observe the Chief striking any civilians, using pepper spray, directing officers to make unlawful arrests, or speaking discourteously.

Conclusions and Recommendations

§ 87(2)(g) There is no question that AC Esposito was in the vicinity of 54th Street and 2nd Avenue at some point in the afternoon during the anti-war rally on February 15th, 2003. § 87(2)(b)'s claim of being present at 54th Street and 2nd Avenue is also without question. There is also no question that AC Esposito's directed demonstrators to move out of the street and onto the sidewalk, as he stated. However, the use of profanity in these directions was denied by the Chief. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation A. Assistant Chief Michael Esposito spoke obscenely to § 87(2)(b) in violation of Patrol Guide Procedure 203-09.

§ 87(2)(b) alleged that a uniformed, White male officer named “Esposito” yelled, “get the fuck on the sidewalk” to her. She further described the officer as being 5’8,” with a slightly heavy build, white hair, and possibly in his 60s. She also indicated that an unidentified officer informed her that there were two Espositos working in the area and that one was a Chief. AC Esposito, who fits this description, admitted that he told numerous civilians to “get onto the sidewalk” over the course of the day but denied using profanity.

Patrol Guide Procedure 203-09 directs officers to “be courteous and respectful” during public contact. This does not prohibit them from using profanity, though. The Office of Administrative Trials and Hearings (OATH) has set a precedent whereby the use of profanity must be analyzed within the circumstances and intent of the utterance. Specifically, administrative law judges have argued that profanity is permissible where the officer has resorted to such language in order *to forcefully make a point, to gain compliance with an order or direction or in the heat of a highly dangerous situation* (see *Police Department v. DiFalco*, OATH Index No. 1623/97 (Dec. 5, 1997); *Police Department v. Campos*, OATH Index Nos. 640-42/96 (Feb. 5, 1996); *Police Department v. Iacurto*, OATH Index No. 1064/90 (June 13, 1990)). § 87(2)(g)

Allegation B. Assistant Chief Michael Esposito used physical force against § 87(2)(b) in violation of Patrol Guide Procedure 203-11.

§ 87(2)(b) alleged that an officer pushed her while her back was turned to this officer, thereby causing her to stumble forward, though she did not fall to the ground. Upon turning around, she stood face to face with the officer that she identified as “Esposito” with the aforementioned description that matches AC Esposito. § 87(2)(b) did not sustain an injury. AC Esposito categorically denied pushing any civilians from behind during the rally and indicated that all of his physical interactions were face to face.

Regarding the use of force, Patrol Guide Procedure 203-11 directs officers to use the “minimum necessary force” and “employ non-lethal alternatives, as appropriate.” § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: